

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of REBECCA RENEE BALMER,
MARISSA DESIREE PHILLIPS, JOSLYN BETH
MAURER, and ALAINA ROSE SIPPO, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

HEATHER MAURER,

Respondent-Appellant,

and

TRAVIS SIPPO,

Respondent.

UNPUBLISHED

May 6, 2010

No. 294913

St. Clair Circuit Court

Family Division

LC No. 09-000301-NA

Before: TALBOT, P.J., and FITZGERALD and M. J. KELLY, JJ.

PER CURIAM.

Respondent mother Heather Maurer appeals as of right the trial court's decision terminating her parental rights under MCL 712A.19b(3)(b)(ii), (g), and (j). On appeal, we conclude that the trial court did not err when it found that there were statutory grounds for termination, but erred when it failed to make the required findings on the children's best interests. For this reason, we vacate the trial court's order and remand for a determination of the children's best interests.

On appeal, Maurer argues that the trial court clearly erred when it found that the grounds stated under sections (b)(ii), (g), and (j) had been proved by clear and convincing evidence. She also contends that the trial court erred by failing to make specific findings concerning whether it was in the children's best interests to terminate her parental rights. In termination of parental rights proceedings, this Court must defer to the trial court's factual findings if those findings do not constitute clear error. MCR 3.977(J). This Court reviews for clear error both the trial court's finding that a ground for termination has been proven by clear and convincing evidence and its best interests finding. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court—after a

review of the entire record—is left with the definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The trial court did not clearly err in finding that section (b)(ii) and (j) were established by clear and convincing evidence.

In this case, the Department of Human Services petitioned for the termination of Maurer’s parental rights to the minor children after respondent father Travis Sippo admitted to police that he sexually assaulted Maurer’s daughter, Rebecca.¹ A trial court may terminate a parent’s parental rights to a child under MCL 712A.19b(3)(b)(ii), if the child or a sibling suffered sexual abuse and the “parent who had the opportunity to prevent the . . . sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent’s home.” Maurer does not contest the fact that Sippo sexually assaulted Rebecca or that she had the opportunity to prevent the abuse. Rather, she contests the trial court’s finding that there is a reasonable likelihood that the children will suffer injury or abuse in the foreseeable future. Although this is a close case, on this record, we cannot conclude that the trial court erred when it found that there was such a likelihood.

There is record evidence that indicates that—for whatever reason—Maurer repeatedly failed to appreciate the danger that Sippo posed to her children. There was evidence that Maurer learned that one of Joslyn’s minor friends had accused Sippo of inappropriately touching her during a sleep over. Although there was testimony that the minor girl stated that Sippo had only lain next to her, this behavior should have caused Maurer serious concern. Nevertheless, Maurer testified that she merely told Sippo that he was not allowed to be alone with the girls in their room. There was evidence that, thereafter, she continued to leave her children alone in Sippo’s care.

After Maurer learned of the accusations that Sippo had sexually assaulted Rebecca, she continued to expose her children to him. She did this because she was not convinced that Sippo had done anything wrong; she indicated that she was not sure whether to believe her daughter. Maurer even continued to see Sippo after she learned that he had confessed to sexually assaulting Rebecca. On one occasion she took Joslyn and Alaina to see Sippo and he placed a knife to his throat and threatened to kill himself in front of the children. Despite this she later picked Sippo up and ran errands with him and her children. She did this because she needed the money he was going to give her. She testified that she only “realized” her mistake when her mother called and reported that she had been seen with him in a bank parking lot. She stated that she did not leave any of her children alone with Sippo.

The evidence that Maurer was unable or unwilling to see the danger that Sippo posed to her children is evidence that Maurer has in the past subordinated her children’s safety to her own personal needs. It is also evidence that Maurer will continue to subordinate her children’s needs to her own when it comes to future relationships. Therefore, there was evidence from which the

¹ Sippo ultimately pleaded guilty to two counts of criminal sexual conduct in the third degree.

trial court could find that there was a likelihood of future harm. Moreover, this Court will defer to the trial court's superior ability to evaluate Maurer's credibility and her willingness to place her children's needs before her own. *Miller*, 433 Mich at 337-338, 344. The trial court did not clearly err when it found that the grounds stated under MCL 712A.19b(3)(b)(ii) had been met.

We conclude that this same evidence supports the trial court's findings with regard to MCL 712A.19b(3)(j), which permits a parent's parental rights to be terminated when there is "a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." Because the trial court did not err in finding that one or more grounds for termination had been met, we need not consider the trial court's findings regarding MCL 712A.19b(3)(g); any error in those findings would be harmless. See MCL 712A.19b(3).

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests," the court must terminate the parent's parental rights. MCL 712A.19b(5). Although the referee recommended termination because it was in the children's best interests, the trial court failed to make specific findings regarding the best interests of the children in its opinion. This Court addressed this issue in *In re Hansen*, 285 Mich App 158; 774 NW2d 698 (2009). Citing MCR 2.613(A), the *Hansen* Court found that the trial court's error in failing to affirmatively find that termination was in the children's best interests was harmless because the error was not inconsistent with substantial justice where there was ample evidence that termination was in the children's best interests. *Id.* at 165-166.

Here, the issue of the children's best interests is a closer question. There was testimony that Maurer had a significant bond with her children, the children lived with her and there were no issues of neglect. Further, the two older children expressed a desire to remain with their mother. Although Maurer showed a significant lack of insight into the situation that brought the children under the court's jurisdiction, the termination hearing took place only a few months after the event. Because the best interests question is close, we cannot conclude that the trial court's failure to make specific findings regarding the children's best interests was harmless. *Id.*

For the reasons stated, we agree that there was clear and convincing evidence to support the trial court's findings that termination was warranted under sections (b)(ii) and (j). However, because the trial court failed to make the requisite findings that termination was in the children's best interests, and we cannot conclude on this record that the error was harmless, we vacate the trial court's order terminating Maurer's parental rights and remand this matter to the trial court for findings concerning the children's best interests.

Vacated and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Michael J. Kelly